

### REMARKS

The Applicants respectfully request that the Examiner enter and consider the amendments to the claims as set forth herein.

Claims 1-231 are cancelled. Claims 232-244 are pending in the application.

Amendments are submitted to claims 232-234. Support for these amendments is found in the specification as filed. These amendments do not introduce new matter. By these amendments, Applicants do not acquiesce to the propriety of any of the Examiner's rejections and does not disclaim any subject matter to which the Applicants are entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997).

#### I. Claim Rejections under 35 U.S.C. § 103

Claims 232-244 are rejected under 35 U.S.C. § 103 as being unpatentable over Paradissis et al. (U.S. Pat. 6,488, 956) in view of Remington's Pharmaceutical Sciences and Ashmead et al. (U.S. Pat. 4,863,898). Office Action, pp. 2-4. Applicants respectfully traverse.

Without acquiescing to the propriety of the Examiner's rejections and solely in an effort to further prosecution, independent claims 232-234 have been amended to recite "minerals consist of calcium, iron, magnesium, zinc, and copper." Support for these amendments is found in the specification as filed. *See, e.g.*, paragraphs [040] and [041].

#### A. The prior art does not teach or suggest all the claim limitations of the claimed invention

To maintain a proper rejection under 35 U.S.C. § 103, the USPTO must meet four conditions to establish a *prima facie* case of obviousness. First, the USPTO must show that the prior art suggested to those of ordinary skill in the art that they should make the claimed composition or device or carry out the claimed process. Second, the USPTO must show that the prior art would have provided one of ordinary skill in the art with a reasonable expectation of success. Both the suggestion and the reasonable expectation of success must be adequately founded in the prior art and not in an applicant's disclosure. Third, the prior art must teach or suggest all the claim limitations. *In re Vaeck*, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991). Fourth, if an obviousness rejection is based on some combination of prior art

references, the USPTO must show the suggestion, teaching, or motivation to combine the prior art references. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999).

The Examiner admits that there is a difference between the prior art and the claimed invention in that the prior art does not expressly disclose a composition consisting only of the claimed vitamins, minerals and excipients. Office Action, pp. 3-4. The Examiner argues, however, that the prior art amply suggests the same as the claimed invention because the prior art discloses combinations of vitamins and minerals to treat deficiencies in combination with excipients and the use of copper chelates as sources of copper. Office Action, p. 4.

The Examiner is incorrect in this assertion. Paradissis does not teach or suggest each and every element of the invention as in independent claims 232-234. Specifically, Paradissis does not in any manner teach or suggest a composition consisting of only the vitamins Vitamin A, Vitamin D, Vitamin C, Vitamin E, folic acid, niacin, Vitamin B<sub>1</sub>, Vitamin B<sub>2</sub>, Vitamin B<sub>6</sub> and Vitamin B<sub>12</sub>. Ashmead and Remington's do not make up for this deficiency. Moreover, Paradissis teaches away from the "minerals consist of" element of the present invention by requiring other minerals. Indeed, Paradissis discusses the inclusion of many other minerals such as potassium, iodine, chromium, molybdenum and selenium. Table I and Table II. Therefore, Paradissis teaches away from a composition consisting only of the minerals calcium, iron, magnesium, zinc and copper and Ashmead and Remington's do not make up for this deficiency of Paradissis.

The Examiner also argues that the references of record disclose amounts of copper and iron overlapping the claimed amounts. When Paradissis discusses these amounts, however, it also requires that iodine be included. *See* column 10, lines 39-44. This requirement of the addition of iodine in the compositions of Paradissis when copper and iron are present does not teach or suggest a composition consisting only of the minerals calcium, iron, magnesium, zinc and copper, as claimed.

In summary, the references of record, singly or in combination, do not teach or suggest all the claim limitations of the present invention, as required to maintain a proper rejection under 35 U.S.C. § 103. *In re Vaeck*, 20 U.S.P.Q.2d 1438 at 1442. Specifically, the combination of Paradissis, Ashmead and Remington's do not teach or suggest the present invention. Accordingly, Applicants respectfully request that any rejections of pending claims 232-244 under 35 U.S.C. § 103(a) over Paradissis, Ashmead and Remington's be reconsidered and withdrawn.

## **II. Rejections under Non-Statutory Double Patenting**

A. Claims 232-244 are provisionally rejected under the doctrine of obviousness-type double patenting as being unpatentable over claims 208-218 of copending application No. 11/296,210. Applicants respectfully traverse.

The Examiner has instructed that a terminal disclaimer in compliance with 37 C.F.R. §1.321(c) may be used to overcome an actual or provisional rejection based on non-statutory double patenting ground. Without acquiescing to the propriety of the Examiner's rejections, and specifically the Examiner's interpretation of what the cited references teach or claim, Applicants respectfully and properly defer addressing the present rejection until there is allowable subject matter in the present application. At that time, a terminal disclaimer will be filed if warranted by the Examiner's rejection in view of the allowed claims.

**Conclusion**

Applicants have properly and fully addressed each of the Examiner's grounds for rejection. Applicants submit that the present application is now in condition for allowance. If the Examiner has any questions or believes further discussion will aid examination and advance prosecution of the application, a telephone call to the undersigned is invited. If there are any additional fees due in connection with the filing of this amendment, please charge the fees to undersigned's Deposit Account No. 50-1067. If any extensions or fees are not accounted for, such extension is requested and the associated fee should be charged to our deposit account.

Respectfully Submitted,

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